

4 April 1972


MEMORANDUM FOR: Executive Director-Comptroller

SUBJECT: Senate Request for Information on Executive Agreements with Foreign States

1. I have been endeavoring to get some agreed on definition of an "executive agreement." I have talked to Charles I. Bevans, Assistant Legal Adviser for Treaty Affairs, Department of State. So far all he has done is pull together those country-to-country agreements which have been negotiated, signed by the Department of State, and published. He has these since 1945. It would seem quite clear that these would be the usual executive agreements, but it also seems just as clear that this compilation will not satisfy what the Senate is after.

2. J. Fred Buzhardt, General Counsel, Department of Defense, is pulling together Defense's material, which he says is computerized. It, of course, goes from very formal, long-range agreements through contractual agreements, such as those pertaining to sale of arms to foreign countries, to informal arrangements of great variety. At present he is thinking of a concept which looks to the degree of formality by which an agreement has been dignified and would like to develop a theory that an executive agreement is only one which has been dignified by the personal attention of the President. This concept has considerable appeal and if it could be maintained would probably eliminate a large portion of our problem. Mr. Buzhardt will be Defense's witness before Senator Ervin's Subcommittee, and when we have had a look at our material, we should be back in touch with him.

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LAWRENCE R. HOUSTON
General Counsel

cc: OLC